

# Breakout group case studies

## CASE STUDY 1 – Allergies and service animals

Professor Ito teaches in the Business Administration program at a community college. She has been there for over 15 years and is well regarded by her peers and students. Ms Ito is a blind person and relies on her guide dog, Patten, a highly trained working animal that accompanies her everywhere.

Mya is enrolled in the three-year Business Administration program with a focus on Human Resources. The program includes course work on recruiting, compensation, training, benefits, occupational health and safety, labour relations, leadership, motivational techniques and organizational behaviour. The program has a co-op component.

Mya is in her second year. She is required to take the course “Introduction to Human Resources Management,” which is a four hour per week course in the 4<sup>th</sup> semester of the program. It’s a pre-requisite for the human resources speciality.

Professor Ito teaches several courses in the program, including “Introduction to Human Resources Management.” The program runs this course twice per semester. Professor Ito has the daytime course and Professor Gupta teaches the evening course.

Mya has a severe allergy to dogs and is thinking about withdrawing from the course. She has been sitting in the back of the class as far away from Patten as possible. Patten stays under Professor Ito’s desk during her lectures. However, Mya has found that her eyes itch and she has much difficulty sitting in the same room with Patten for two hours at a time.

Mya has considered the evening course but Seth, her three-year-old son, is in day-care at the college during the day and she doesn’t have the money to hire a baby-sitter if she switched to the twice a week evening course.

Mya claims that because of her allergies she is being denied equal access to the college’s educational services. She doesn’t understand why Professor Ito needs to have Patten actually in the class while she is teaching.

## Notes

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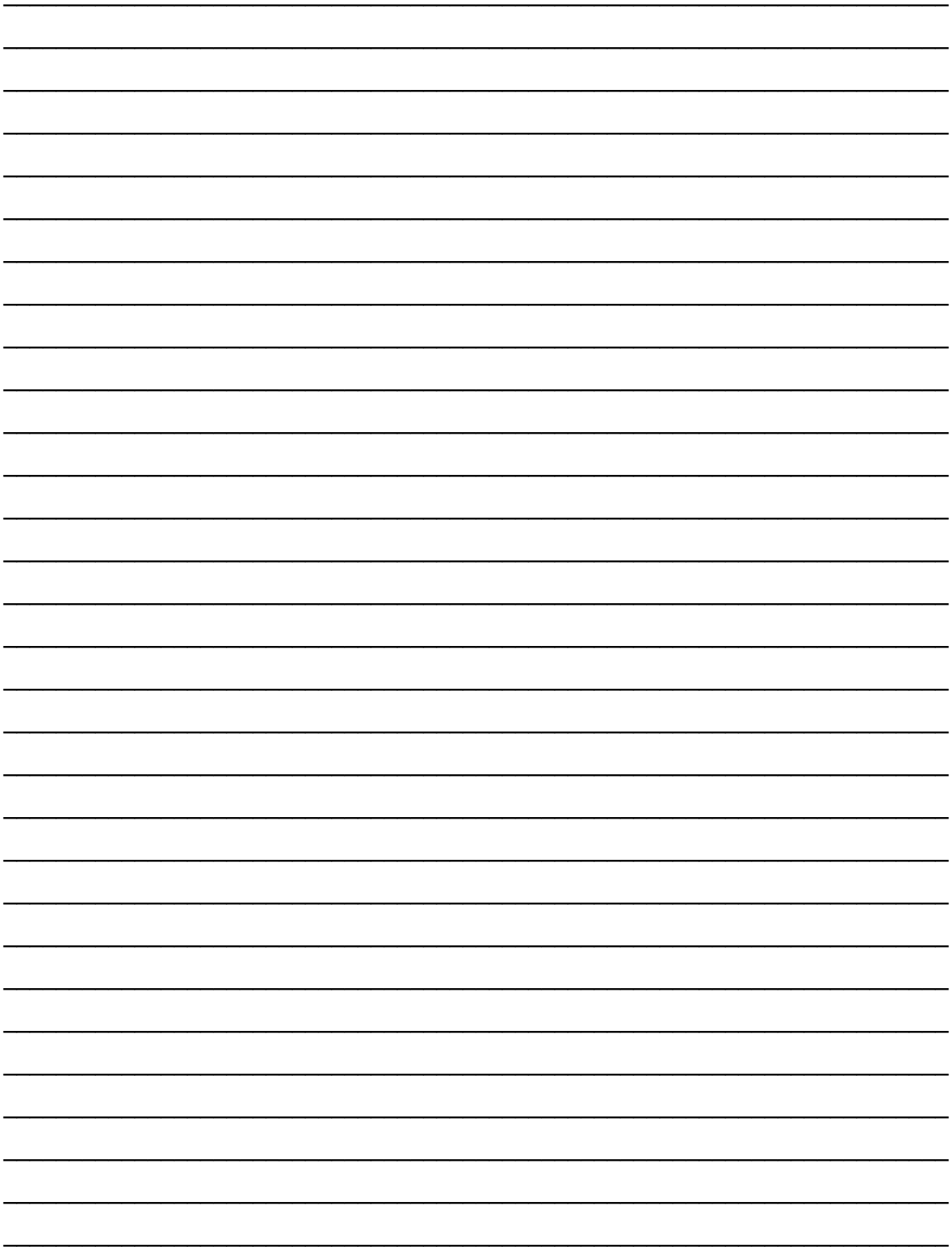
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## CASE STUDY 2 – Barbershop with Muslim Barbers, Woman Denied Service

Read the following news clippings:

**Toronto barber shop won't cut women's hair on religious grounds**

**TORONTO NEWS / Lesbian denied 'businessman's cut' launches complaint to OHRC**

*Andrea Houston / Xtra! / November 03, 2012*

All she wanted was a haircut.

But when Faith McGregor walked into the Terminal Barber Shop at Bay and Dundas streets, she was shocked to hear from the owner that no barber at the shop would cut a woman's hair because it goes against their religious beliefs.

McGregor has since filed a complaint about the June incident with the Ontario Human Rights Commission (OHRC).

The shop wasn't busy that day, she says, and two barbers were standing at the back of the store. "I asked, 'Do you do a businessman's cut?' It's a basic haircut. They said they do."

After describing the cut, owner Omar Mahrouk stopped her. "He just looked at me and said, 'I can't do that. We don't cut women's hair here.'"

McGregor says she was shocked. "I just wanted the exact same cut as they would give a man. Nothing different." The 34-year-old dyke says she always gets her hair cut at a barber shop, not a salon.

*Faith McGregor has filed a complaint with the OHRC against the Terminal Barber Shop on Bay Street because she was refused service. The barber says it's against his religion to touch a strange woman.*

*(Andrea Houston)*

Mahrouk told her "it's against his religion" to cut a woman's hair, she says. Mahrouk and two other barbers refused, all saying they practise Islam, which forbids them to touch strange women, she says.

For his part, Mahrouk admits that he denied McGregor service. "I can cut my wife's hair, but not a strange lady. For me this is not discrimination. I explained that I have nothing against woman. This is my religion. She did not accept it."

The Ontario Human Rights Code states that business owners can't deny service based on sex.

"The law is the law, but this is my religion. But I am not discriminating against anyone," Mahrouk insists. "It is against my religion."

On the surface, the Human Rights Code says Terminal Barber Shop appears to have discriminated against McGregor based on her sex.

But it's not that simple, says Pascale Demers, communications officer for the OHRC. This is a case of competing rights: the individual right of a person not to be discriminated against based on their sex or gender and the right of a person to hold religious beliefs.

"Generally speaking, services that are offered to the public should be made available to everyone without discrimination, based on sex, sexual orientation, race, religion, disability," Demers says. "Each side will bring forward a defence that their rights trump the other."

She says it's a case that presents new terrain for the Tribunal. "We have been unable to find any cases like this. It's unique. It will be looked at in an individual context, each with its own unique set of evidence. The tribunal will make a decision based on its set of facts presented to them."

No rights are absolute, Demers says, and there is no hierarchy of rights.

"We look at cases individually," she says. "We have to look at ways both sides can be accommodated. But, absolutely, there will be instances where one side will be dissatisfied, though they are claiming a right."

If the Tribunal finds that the barber shop violated McGregor's rights, it could order a monetary settlement or order the shop to implement a set of "public remedies," such as ordering the shop to offer services "in a way that is considered non-discriminatory." That may involve hiring additional staff, for example, she says.

"It's not a punitive process *per se*; it's about bringing the person back to a place that is not discriminatory."

If Mahrouk fails to comply, she says, the shop "could keep facing complaint after complaint, and it could eventually get costly."

Mahrouk says that if he is forced to serve women he will have to change his occupation.

His lawyer, David Kolinsky, says denying service on religious grounds is valid. Still, even without the religion factor, barber shops have traditionally been men only.

"I understand she wants the same type of haircut that would be provided to the male patrons, but it's more complicated than that," he says. "She wants the barber shop to be compelled to provide service to all women. That goes well above the skill set and training of these barbers."

But McGregor says that's not true. "I am not asking that the shop start servicing all women, regardless of the type of cut requested."

If a woman asks for a service they already provide, they should not be turned away, she says.

“It seems they are extending the scope of my complaint,” she says. “My specific request was for only the exact same cut they would provide to a man . . . We are no different from the neck up.”

“I would not expect the shop to start cutting the hair of my female friends with long hair, colours or perms.”

Sean Gibson, of the Ontario Barber Association (OBA), wrote a letter in defence of Mahrouk explaining why the distinction between “barber” and “hairstylist” justifies Mahrouk's discrimination against women.

Gibson says barbers should have the autonomy to decide because barber shops have traditionally been male-only spaces.

“In certain countries, men just service other men for religious reasons. It's not that they don't want to service women, but because of their religious beliefs they can only cut the hair of other men,” he explains. “While that may seem archaic, it's understood. The history goes back to men-only bathhouses in ancient Greece. That's where barber shops started. They were only places for men.”

Still, Gibson says Mahrouk did not intend to discriminate in a malicious or disrespectful way, but “perception is everything.”

“He was unable to service her because of his religious beliefs. So it's a discussion of what's more important: obliterating his religious beliefs or serving this young lady? Denying his rights or denying her rights.”

“She can still get service, maybe not from this specific place, but I'm sure one of our [OBA] members would be glad to cut her hair,” he adds.

### **Muslim barbers' refusal to provide service prompts complaint to tribunal**

*Tim Alamenciak / Toronto Star / Nov. 15, 2012*

A request for a lunch-hour haircut has turned into a battle over human rights, pitting freedom of religion against a woman's right not to be denied service based on her gender. The complainant has suggested that the Terminal Barber Shop, co-owned by Omar Mahrouk, post a sign saying it serves both men and women.

Faith McGregor walked into the Terminal Barber Shop on Bay St. in June to get a haircut: the “businessman,” short on the sides, tapered, trim the top. The barbershop, like many in Toronto, doesn't do women's haircuts. But McGregor, 35, said she wanted a men's cut. Co-owner Omar Mahrouk told her that his Muslim faith prohibits him from touching a woman who is not a member of his family. All the other barbers said the same thing.

“For me it was just a haircut and started out about me being a woman. Now we’re talking about religion versus gender versus human rights and businesses in Ontario,” said McGregor.

She filed a complaint with the Human Rights Tribunal of Ontario almost immediately, saying she felt like a “secondclass citizen.” Mahrouk’s response to the tribunal, provided through his lawyer, David Kolinsky, doesn’t dispute McGregor’s complaint but says being forced to cut a woman’s hair would violate his freedom of religion. “We live for our values. We are people who have values and we hold on to it,” said Karim Saaden, co-owner of the Terminal Barber Shop. “I am not going to change what the faith has stated to us to do. This is not extreme; this is just a basic value that we follow.” He noted that it was a matter of adherence to faith, not a gender issue. “In our faith, for instance, I can cut my mother’s hair, I can cut my sister’s hair, I can cut my wife’s hair, my daughter’s hair,” said Saaden. The barbershop suggested a solution to McGregor toward the end of August, offering her a haircut from a barber willing to serve her. “It’s the principle of the matter, so I turned down their lawyer’s offer and said no, I wish to continue with the tribunal, because this needs to be discussed and now it’s bigger than what occurred with me that one day, in one afternoon,” said McGregor.

She is asking the tribunal to force the barbershop to offer its men’s haircuts to both sexes, and suggests in her application that the shop post a sign indicating it serves both men and women. She is not seeking money.

The matter is one in an increasing number of “competing rights” cases seen by the Human Rights Tribunal, said Pascale Demers, a spokesman for the Ontario Human Rights Commission, which studies and develops rights policies. The term refers to a situation where two individuals have a right, but there’s a conflict when both exercise it.

“There’s no hierarchy of rights under the legislation, so it’s not about one right necessarily trumping the other. It’s about looking at the facts of the case,” said Demers.

There is little precedent in the area, said Demers, and this case could set an important one.

“It’s useful because, as you know, Ontario’s population is increasingly diverse and these things are bound to happen,” Demers said.

In addition to discussing religious freedom, Mahrouk’s response expresses concern that the complaint will force the shop to train its barbers to cut and style women’s hair, which is outside their skill set.

“I know that there is more money to make in hair salons for women than barbershops, but because we’ve been barbers for so long, we chose to take over the business as a barbershop and that is why we don’t cater to women,” said Saaden.

The parties will first try mediation, scheduled for next February. If that fails, an adjudicator will decide the outcome of the case.

## **DiManno: Human rights suit presents two dogmas, a hair’s breadth apart**

*Toronto Star / November 16, 2012*

The first time a man refused to shake my proffered hand in Baghdad, I was insulted and embarrassed. He was a doctor and I wondered, without saying so aloud, how he could ever examine female patients. But of course women and girls would not go to him. The

fellow was apologetic yet firm. His Muslim faith forbade him from touching unrelated females. That was a religious proscription.

In Kandahar I was scolded for sitting on the ground at a political rally — only female inside the huge tent — with my legs outstretched because Afghans consider showing the bottom of one's feet offensive. That was a cultural injunction.

Neither incident provoked outrage on my part. Impatience, maybe, and a deepening appreciation for the small, inadvertent incivilities that separate us even as we strive, globally, big picture, big issues, just to get along.

There is entirely too much easy outrage afoot. And way too much litigious intervention in this hemisphere as the mildly aggrieved take their bitsy whinges to courts, quasi-courts and the vast, overbearing apparatus of human rights tribunals.

Which brings me to the clip-job, or non-clip-job, that has made a mountain — as in “the mountain that will not come to Muhammad” — out of a molehill, or a Babel of competing rights out of a small ziggurat.

As a front page Star story by colleague Tim Alamenciak on Thursday revealed, Faith McGregor has filed a complaint with the Human Rights Tribunal of Ontario, marking her X in the box (there are 18 of these to choose from) that references “sex, including sexual harassment, pregnancy and gender identity” as grounds for alleging a rights violation.

Last June, she stepped into the Terminal Barber Shop on Bay St. for a lunch-hour haircut, requesting a butch-style “businessman,” short on the sides, tapered, and trim up top.

Co-owner Omar Mahrouk demurred, as did two other barbers working that day, explaining that his Muslim faith prohibited him from touching a woman who was not a member of his family. McGregor was displeased, claims to have felt like a second-class citizen, and denounced Mahrouk. “You are sexist,” she stated (this quote included in her complaint document) before leaving. And you are rude, Ms McGregor.

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